RES JUDICATA — WHAT JUDGMENTS ARE CONCLUSIVE — ACQUITTAL IN CRIMINAL PROSECUTION AS BAR TO FORFEITURE OF SMUGGLED GOODS. — The United States brought a libel against rings alleged to have been smuggled by the defendant, in violation of a statute providing for criminal punishment and forfeiture of the goods. U. S. COMP. ST. (1901), § 3082. The defendant pleaded an acquittal in a criminal prosecution for smuggling these rings. *Held*, that the action for the forfeiture is barred. *United States* v. *Rosenthal*, 174 Fed. 652 (C. C. A., Fifth Circ.).

Where the same acts constitute a crime and also give an individual a cause of action for damages or a penalty, an acquittal in a criminal prosecution is never a bar to a civil suit. *Tumlin* v. *Parrott*, 82 Ga. 732. The parties not being the same in both proceedings, are not bound by the former judgment. But where the parties are the same in both cases, it is generally held that a judgment in one action makes a question *res judicata*. *United States* v. *A Lot of Precious Stones*, 134 Fed. 61. *Contra*, *People* v. *Snyder*, 90 N. Y. App. Div. 422. It might well be argued that the difference in the form of action requires an opposite rule. The libel for the goods is a civil proceeding *in rem*, and need be proved by a preponderance of evidence only, whereas to hold the defendant criminally, the jury must be satisfied beyond a reasonable doubt. *The Good Templar*, 97 Fed. 651. But the federal courts construe the statute under discussion as providing two punishments for the offense, a fine or imprisonment and a forfeiture of the goods: if the facts do not justify the defendant's undergoing one punishment, he should not be required to defend in an action for the other. *Coffey* v. *United States*, 116 U. S. 436.

VOLUNTARY ASSOCIATIONS — NAME OF ORGANIZATION — RIGHT TO EXCLUSIVE USE. — Some expelled members of an unincorporated Masonic order formed a corporation, adopting a name almost identical with that of the original society. The corporation sued for an injunction restraining the society from the use of its name, and the society filed a cross-bill for the same purpose. *Held*, that neither is entitled to an injunction. *Most Worshipful Grand Lodge Free, Ancient, and Accepted Masons of the District of Columbia* v. *Grimshaw*, 38 Wash. L. Rep. 130 (D. C., Ct. App.).

In refusing to allow discharged or seceding members of an association to deprive the original society of its established name, this decision is obviously correct. *Black Rabbit Association* v. *Munday*, 21 Abb. N. C. (N. Y.) 99. The cross-bill against the new corporation, however, raises a more difficult question. Although the law does not, strictly speaking, recognize property in a name, it protects trade-marks and trade-names to prevent one from reaping where another has sown. *Croft* v. *Day*, 7 Beav. 84. If infringement is shown, neither actual damage nor fraudulent intent need be proved. *Vulcan* v. *Myers*, 139 N. Y. 364. But when the question arises between non-commercial associations, the courts are less ready to grant relief. *Colonial Dames of America* v. *Colonial Dames of the State of New York*, 29 N. Y. Misc. 10. In several cases, however, either because of actual fraudulent intent or because of the probability of confusion, the use of a name has been enjoined. *Society of the War of 1812* v. *Society of the War of 1812 in the State of New York*, 46 N. Y. App. Div. 568; *International Committee of Young Women's Christian Associations* v. *Young Women's Christian Association of Chicago*, 194 Ill. 194. On principle it seems impossible to draw a sharp line between commercial and non-commercial associations. There are other legitimate objects besides business, and if the public are likely to be deceived, and the work of the society interfered with, the use of a similar name by a rival organization should be enjoined. *Benevolent and Protective Order of Elks* v. *Improved Benevolent and Protective Order of Elks*, 118 S. W. 389 (Tenn.). *Cf. Supreme Lodge, Knights of Pythias* v. *Improved Order, Knights of Pythias*, 113 Mich. 133.